IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 368 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI TEJABHAI BARIYA

Versus

STATE OF GUJARAT

Appearance:

MR ASIM PANDYA for HL PATEL ADVOCATES for Petitioner

MR BY MANKAD, APP for Respondent No. 1

MR BHARAT R PANDYA for Respondent No. 2

MR DF AMIN for Respondent No. 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 14/12/2000

C.A.V. JUDGEMENT

This is a Criminal Revision Application under Sec.397 of the Criminal Procedure Code, 1973, (for short `Cr.P.C.') filed by Revision-Opponent No.2 of Criminal

Revision Application No.47/2000 which was pending on the file of the learned Sessions Judge, Panchmahals at Godhra, challenging legality, correctness and propriety of judgment Exh.14 dated 8th August, 2000, rendered by learned Sessions Judge, Godhra, in aforesaid Criminal Revision Application No.47/2000.

2. Here in this Criminal Revision Application, the revision petitioner is, as alleged by him, a bonafide purchaser (who will be referred to as purchaser) for value without notice, of Tractor No.GJ-17-T 1456 and Trolly No.GU-17-X 1489 attached to that Tractor (Both will be referred to as `the vehicles' for convenience). The revision opponent No.2 is a Credit Society carrying on business of financing, by lending money to the owners of different vehicles. That Credit Society will be referred to as the society for convenience while revision-opponent No.3 is, as per his case, an owner of said tractor and trolly (vehicles) and as per RTO record that two vehicles are registered in name of revision opponent No.3 and therefore his case is that he is an owner of said two vehicles and, therefore, parties will be referred to hereinafter as "purchaser", "society" and "the owner" respectively at appropriate places.

3. The facts leading to this present Criminal Revision Application in a nutshell are as follows:

3.1 As per record of police papers supplied by learned APP, revision - opponent No.3 purchased tractor from Bharat Tractors, Panchmahals at Godhra, on 28th January, 1998. He entered into Hire Purchase Agreement with society i.e. Revision-Opponent No.2 on or about 18.12.1997. When he entered into Hire Purchase Agreement with society, he executed a promissory note for Rs.2,92,500/- in favour of society on 18th December, 1997. On that very day, he also executed other connected relevant documents alongwith Hire Purchase Agreement. It also appears from record that, the owner agreed upon to repay the amount of loan taken from society by equal 36 instalments, each of Rs.8100/- during the period from 18th January, 1998, to 18th December, 2000. It appears from police papers that owner had deposited Rs.73,500/in the office of society on 18th December, 1997, and on that very day he also took a loan of Rs.2,92,500/- from the society.

3.2 As it reveals from police papers and as per the case of purchaser, who is a revision petitioner, in the month of December 1997, he got purchased said two vehicles through the owner from Bharat Tractor Company

but before that the owner had recovered in all Rs.2,20,000/- by instalments from purchaser. The purchaser entered into such transaction with regard to vehicles through his Broker Raising Kalu Damor. After purchase of said two vehicles from the dealer, the purchaser took possession of that two vehicles and brought them to his residence. Thereafter, the owner made a telephone to the purchaser and asked him to come with tractor and trolly to Godhra for registration of said vehicles in the RTO office. The purchaser, in company of his brother and driver Ramabhai Kalubhai, went to the field of owner and thereafter owner took the possession of that tractor and trolly and parked that two vehicles in his filed and asked the purchaser to bring an amount of Rs.90,000/-. He also informed the purchaser that he (owner) would not hand over the possession of said two vehicles to him (purchaser) unless and until the tractor is registered in the RTO office. As the owner took over the possession of vehicles and parked them in his field and asked him to pay further amount of Rs.90,000/, there was a hot discussion in between owner and purchaser and he (owner) informed the purchaser that he would not part with the possession of the vehicles unless and until the purchaser would pay Rs.90,000/-. It is the case of the purchaser, that one week thereafter, he went to Godhra and paid Rs.90,000/- to owner. Thereafter, the owner went to Dohad and handed over the registration book issued by RTO. Thus, it is the case of the purchaser that he has paid in all Rs.3,10,000/- to the owner and purchased that two vehicles and got the physical possession of said two vehicles from the owner.

3.3 From record it appears that, thereafter on or about 23.6.99, the owner lodged his complaint in Godhra Town Police Station, alleging inter-alia in the complaint that his tractor and trolly have been stolen away from his field. That complaint came to be registered as C.R.No. I 207/99. The police started to conduct police investigation and after making thorough investigation, on or about 24.9.99, the police made a report that no fruitful result has come out so far as that vehicles are concerned and, therefore, police made a report to Court for grant of `A' summary with a permission to keep the investigation continued in case if vehicles are traced out.

3.4 Thereafter, on or about 10.1.2000, police seized said two vehicles from the purchaser and total amount of value of vehicles was assessed at Rs.2,92,000/which is stated in Muddamal Pavty. Thereafter, the Investigating Officer submitted his final report under Sec.173 of

Cr.P.C. to Court on 30.4.2000 and submitted that owner and the employees of the society in collusion with each other, arranged for false complaint being filed by the owner and in view of that fact, `B' summary be issued in the case. The Investigating Officer also recommended that said two vehicles be handed over to the purchaser Govindbhai Tejabhai Baria. It also appears from the record that the learned Chief Judicial Magistrate, Panchmahals at Godhra, ordered to issue a notice against the complainant i.e. owner/Revision Opponent No.3. As submitted by the learned advocates for both the parties, the learned Chief Judicial Magistrate has not yet granted `B' Summary to Investigating Officer.

3.5 Before the Investigating Officer could submit his report under Sec.173 of Cr.P.C. on 30.4.2000 to the learned Chief Judicial Magistrate, the purchaser submitted one application to the learned Chief Judicial Magistrate on 1.4.2000 with a request to hand over the possession of said two vehicles to him as he is a bonafide purchaser for value without notice. The learned Chief Judicial Magistrate called for the report from the Investigating Officer. Thereafter, after perusing the record of the police papers and after hearing the arguments of the learned advocates for both the parties, the learned Chief Judicial Magistrate passed an order dated 5th May, 2000, below application of purchaser and ordered the possession of said two vehicles to be given to the purchaser if that purchaser furnishes a PR Bond of Rs.2 Lacs with solvent surety of like amount with a condition that he would produce the said vehicles as and when he would be ordered by the court to produce the same. When that application was heard, the society appeared before the Court and advanced its case through its advocate Mr.B.H.Dave and therefore when application of purchaser was decided, the society was given full opportunity of being heard.

3.6 As the learned Chief Judicial Magistrate, Godhra (who will be referred to as `the learned Magistrate') passed an order in favour of purchaser, the society preferred a Criminal Revision Application No.47/2000 to the Sessions Court, Panchmahals at Godhra. The original owner of the vehicles also preferred a Criminal Revision Application No.50/2000. The learned Sessions Judged heard and decided said two applications together and disposed of that two Criminal Revision Applications by one common judgment. The learned Sessions Judge after perusal of the record and proceedings of the case and after hearing the arguments of the learned advocates for both the parties, rendered his judgment Exh.14, dated 8th

August, 2000. By that judgment Exh.14, the learned Sessions Judge allowed the Criminal Revision Appln. No.47/2000 filed by the society and rejected the Criminal Revision Appln. No.50/2000 filed by the owner. The learned Sessions Judge by rendering his said judgment Exh.14 set aside an order dated 5th May, 2000, of the learned Chief Judicial Magistrate and ordered to handover the possession of said two vehicles to the society if society furnishes PR Bond of Rs.3 Lakhs with surety. He also imposed certain conditions to be complied with by the society.

3.7 Being aggrieved against and dissatisfied with the said judgment Exh.14 dated 8th August, 2000, of the learned Sessions Judge rendered in Criminal Revision Appln. No.47/2000, the purchaser has preferred this present Criminal Revision Application.

4. I have heard Shri Asim Pandya, learned advocate for the Revision-Petitioner, Shri B.Y.Mankad, learned APP for the Revision-Opponent No.1 i.e. the State, Shri B.R.Pandya, learned advocate for the Revision-Opponent No.2 i.e. Society and Shri D.F.Amin, learned advocate for the Revision-Opponent No.3 i.e. the owner. I have gone through the judgment which is challenged in this application. I have also gone through the original police papers supplied by learned APP.

5. Before I deal with the contentions of rival parties, it would be appropriate in the fitness of things to place on record certain legal position with regard to scope and ambit of the powers of the High Court while dealing with such type of revision application.

In case of Khetra Bas Sarnal & Another Vs. State of Orissa, reported in AIR 1970 SC 272, it has been held that the revisional jurisdiction conferred on the High Court under Sec.439 of the Old Act, is not to be lightly exercised.

In case of K.K. Chhinaswamy Reddy Vs. State of Andhra Pradesh & Anr. reported in AIR 1962 SC 1788, it has been held by the Hon'ble Supreme Court that the revisional jurisdiction should be exercised by the High Court only in exceptional cases when there is some glaring defect in the procedure or there is manifest error on a point of law and consequently, there has been a flagrant miscarriage of justice.

It has been held in the case of Meghaji Godadji Thakore & Mebuji Keshuji Darbar Vs. State of Gujarat,

reported in 1992 Cr.LR (Guj.) 519. It has been held by this Court that the revisional jurisdiction sweep of this Court in a revision like one on hand is very much circumscribed. Ordinarily, revisional Court will be at loath to interfere with the concurrent findings of fact unless and until the misreading of evidence or perversity or manifest error of law or miscarriage of justice is successfully pointed out.

5.1 Here in this case, the learned Magistrate of the trial court passed an interim order which is in nature of discretionary order for handing over the muddamal vehicles to the purchaser who is a revision petitioner before this Court. It is an admitted fact that no appeal lies against such type of an interim order in as much as discretionary order. At the same time, such type of orders can be challenged by filing a Criminal Revision Application under Sec.397 of Cr.P.C. either in the Sessions Court or in the High Court. Here in this case, by feeling aggrieved against the said order of muddamal vehicles to be handed over to the purchaser, the society as well as owner had filed their individual separate Criminal Revision Applications in the Sessions Court Godhra and the learned Sessions Judge decided that two Criminal Revision Applications bearing Criminal Revision Appln.. No.47/2000 filed by society and other bearing Criminal Revision Appln. No.50/2000 filed by the owner by one Common Judgment. The learned Sessions Judge rejected Criminal Revision Appln. No.50/2000 filed by the owner but he, by allowing Criminal Revision Appln. No.47/2000 set aside an order of the learned Magistrate and passed an order directing muddamal vehicles to be handed over to the society under certain terms and conditions. Under these circumstances, it is required to know as to what is the scope and powers of the learned Sessions Judge while dealing with and deciding such type of applications.

In case of Sushilaben Mohanlal Vs. Mali Chunilal Hargovind reported in 1991(1) GLH 342 wherein it has been held by this Court that the jurisdictional sweep of revisional court in a case like the one on hand is very much circumscribed and therefore the revisional court will be loath to interfere with the finding of the trial court unless and until the perversity is successfully spelt out.

In case of Arunaben Tuljaram Ramanuj Vs. Vasudev Pranjivan Nimavat and Another reported in 1993(2), 34(2) GLR 1232 wherein this Court has held in Para 3 as follows:

"It is a settled principle of law that revisional powers are not appellate powers. The learned Additional Sessions Judge appears to have entertained an illusory belief that he was exercising appellate powers with respect to the Revisional Application on hand. Without coming to the conclusion that the findings recorded by the learned trial Magistrate were perverse, the learned Additional Sessions Judge was pleased to upset the findings recorded by the learned trial Magistrate simply because on reappreciation of evidence on record he chose to come to a different conclusion then approach of the learned Additional Sessions judge cannot be upheld in law."

In case of Aarefabanu Majidkhan Pathan @ Kalubhai Panwala Vs. Mohammad Hanif Hussainmiya Shaikh & Anr. reported in 1994(1), 35(1) GLR 886, wherein it has been held by this Court as follows:

"The learned Additional Sessions Judge was conscious of circumscribed jurisdiction which he was exercising. It is indeed true that the jurisdiction which the learned Additional Sessions Judge was exercising was limited and qualified. The interference of the Court would be justified where the decision rendered by the Court below is patently or grossly errorneous or there was no compliance with the provisions of law and that there was a violation of the statutory requirements. The interference could also be caused if it is found that the finding of fact, which was germane to the main issue to be decided by the revisional Court, was not in consonance with the evidence which were brought before the trial Court. The revisional jurisdiction would have also afforded an opportunity of interference to the revisional court if some evidence which was required to be considered for deciding the issue between the parties either was not at all considered or was considered in such a fashion that it could have been one so by a Judicial Tribunal reasonably conversant with the principles which govern the field."

6. In view of above legal position with regard to powers of learned Sessions Judge for deciding Criminal Revision Application filed to challenge a discretionary

order passed by the learned Magistrate, this Court is required to examine the order which is challenged in this present Criminal Revision Application. The learned Sessions Judge has observed in Para 11 of his judgment Exh.14 that he was conscious with regard to a legal position that no interference could be made unless and until it is shown that the order of the trial court was not proper, reasonable and legal. He has also observed that powers of the revisional court are circumscribed. In spite of this, without coming to a definite finding to the effect that the order of the learned Magistrate was patently or grossly errorneous or there was no compliance of the provisions of law or that there was a violation of the statutory requirements by the lower court, he reversed the order as if he was sitting as an appellate Judge to make scrutiny of the order. I have gone through the order of the learned Magistrate. He has observed in Para 7 of his order that he had perused the report of the Investigating Officer meaning thereby he had gone through all the documents produced with the report of the Investigating Officer. He has assigned reasons for passing a discretionary order. That reasons are cogent and plausible.

7. In Criminal Revision Applications No.47/2000, the learned Sessions Judge has reappreciated the evidence on the record and come to a conclusion but for arriving at his conclusion he has not assigned reasons as to how the finding arrived at by the learned Magistrate is incorrect, illegal and improper and, therefore, the learned Sessions Judge has substituted his own decision in place of decision arrived at by the learned Magistrate on the basis of certain hard facts of the case. Thus, prima facie it appears that, the learned Sessions Judge has exceeded his jurisdiction by reappreciating the evidence and also by substituting his own decision in place of decision arrived at by the learned Magistrate and, therefore, it can certainly be said that the order of the learned Sessions Judge is not correct, legal and proper.

8. Here in this case, admittedly revision opponent No.3 is an owner of muddamal vehicles as per RTO record and he had entered into one Hire Purchase Agreement with revision opponent No.2 which is a society dealing with business of financing by lending money by creating its charge on the vehicle. It is also admitted fact that owner had entered into Hire Purchase Agreement with society with his undertaking to repay the amount of loan with interest by 36 instalments each of Rs.8100/- . He did not pay the amount of loan to the society and the

society was bringing pressure on owner to repay the amount of loan together with interest. It is interesting to note that during the course of police investigation, which was carried out on the basis of complaint lodged by owner, the owner stated before the police that he had sold said two vehicles to present revision petitioner i.e. purchaser. This fact came to the notice of the society, also. From police papers supplied by learned APP Shri Mankad, it is crystal clear that Investigating Officer recorded statement of Nagindas Maganbhai Patel who is serving as Manager in the society on 10.1.2000. He has categorically stated in his statement before Police that in the beginning owner was making payment of instalments but since two years before 10.1.2000 he was not making payment of instalments timely and therefore society had to issue notice to the owner. The staff members of the society had also made demands from the owner but the owner was giving false excuses and therefore the owner was asked to hand over the possession of the tractor and trolly to the society. He was also asked to take back that tractor from the Society after making full payment of instalments which had become due. Thereupon, the owner informed the society that he had sold tractor to Govindbhai Tejabhai Baria of village Aagwada in Dohad District and that he (Govindbhai) would pay the amount found due from him and that he(Govindbhai) had gone outside by taking with him said tractor and trolly. Thus, society had come to know that the owner had sold that muddamal vehicles to Govindbhai Tejabhai Baria i.e. present revision petitioner. This witness Naginbhai Maganbhai has further stated before the Investigating Officer that thereafter that Govindbhai Tejabhai came to the society and paid Rs.25,000/for which receipt was issued to him. Thereafter, Harsing Tejabhai Baria, brother of purchaser made payment of Rs.10,000/to the society for which receipt was issued. Thereafter, one Raising Kalubhai Damor made payment of Rs.8000/and thereafter no further payment was made by the petitioner. Thus, it is the say of the society that the society came to know that owner has sold the muddamal vehicles to Govindbhai Tejabhai Baria and that very person i.e. purchaser paid in all Rs.43,000/- to the society and, therefore, it is not the case of either party that purchaser is in illegal possession of the vehicles. He was in possession of two vehicles under a sale transaction effected by the owner of the vehicles.

9. Shri B.R.Pandya, learned advocate for the society has strenuously argued that as per that agreement in between society and owner, there was a condition that without the consent of the society owner cannot sell

vehicle to any other party and, therefore, the purchaser had entered into an illegal transaction. It may be an illegal transaction effected by owner because he contravened the condition of the agreement between society and owner but for purchaser he was innocent about the terms and conditions of the agreement. Merely because there is an entry with regard to HPA in RCA Book, the purchaser who is a villager residing in a small village of tribal area cannot have any idea that there was a term and condition in agreement executed by owner in favour of society that owner cannot sell the vehicles without the consent of the society. The society blows hot and clod. The society wants to take an advantage of receiving Rs.43,000/- from the purchaser and now the society has advanced his arguments that purchaser is in illegal possession of the muddamal vehicles. This type of contradictory arguments cannot be allowed to be advanced from the mouth of the society.

9.1 It is interesting to know that after making payment of Rs.43,000/- the society had continued to make demands from the owner and on one day owner came to society and gave a copy of complaint lodged by him for theft having been committed in respect of two vehicles and at that time the society inquired from owner as to why he lodged a false complaint in the police and thereupon owner informed the society that as he has lodged false complaint for theft of vehicles committed, he would get the money of the insurance claim from insurance company and then he would pay the amount due to the society. Thus, from statement of Manager of society it is crystal clear that society was in know of the following facts:

(a) that owner has sold the vehicles to the purchaser

(b) the purchaser paid Rs.43,000/- to the society

(c) the owner has filed a false complaint of theft having been committed in respect of said vehicles.

(d) on the basis of false complaint owner wanted to receive a claim from the insurance company and from amount of that claim, he agreed to repay the amount of loan to the society.

9.2 In spite of all these facts, the society has

continued to advance the case that purchaser is not having legal possession of the vehicles. It is interesting to note that owner lodged complaint without stating name of any person as accused. As per his case, some unknown person has taken away his vehicles. While lodging the complaint, he was knowing the fact that he has sold the vehicles to the purchaser. After lodging the complaint on 23.6.99 neither accused nor vehicles could be traced out till, 9.1.2000. On 10.1.2000, the Investigating Officer seized said two muddamal vehicles from the present revision-petitioner. The revision petitioner advanced his case in his statement that he has purchased this vehicle from the owner and that he has paid in all Rs.3,10,000/- to the owner. The Investigating Officer has collected evidence with regard to transaction of purchase and payment of Rs.3,10,000/and ultimately on receiving the evidence the Investigating Office has come to a conclusion that owner, in collusion with employees of the society, lodged a false complaint and therefore the Investigating Officer has prayed for "B" summary from the court. No doubt that `B' summary has not yet been granted but the fact remains that at present there is a prima facie case that present revision petitioner is a bonafide purchaser of the said vehicles for value without notice because from RCA Book it cannot be inferred that the condition has been imposed by the society for owner to sell the vehicles without the consent of the society. Therefore the society wants to take an advantage from its own wrong because the Investigating Officer has come to a definite conclusion that owner of the muddamal vehicles, in collusion with the employees of the society lodged a false case and as per the statement of the Manager of the society, owner had informed the society that by filing a false complaint in the police he would realise the amount of claim from the insurance company and thereby he would repay the entire amount due from him to the society, from amount received from the insurance company. If this is the situation, then in no case it can be said that the purchaser is not having legal possession of said two vehicles. Much has been argued by Mr.B.R.Pandya that purchaser illegally purchased the vehicles from the owner though there was a charge of the society created on the vehicles. When an interim order with regard to muddamal is to be passed the court has not to decide the title or ownership of the vehicle. Shri Pandya has cited so many authorities with regard to legal possession of Sec.451 and Sec.452 of Cr.P.C. Here in this case owner lodged a complaint in the police station for which offence has been registered for theft having been committed in respect of two vehicles. That two vehicles have been

found from the possession of the purchaser but at the same time the Investigating Officer has come to a conclusion that complainant has filed a false case and therefore muddamal vehicles are seized during the course of the police investigation and Investigating Officer has reported about such seizure of two vehicles, from the purchaser to the Court and therefore Sec.457 of Cr.P.C. will be applicable. In no case Sec.451 Cr.P.C. will be applicable to this case. Sec.457 of Cr.P.C. reads as follows:

"Sec.457 Procedure by police upon seizure of property:

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry of trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property."

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

10. On reading aforesaid section, it is crystal clear that words "may make such order as he thinks fit" are of much importance. When word `may' is used discretion has been given to the learned Magistrate, of course that discretion is to be exercised judicially keeping in mind the well settled principles of law. The words "to the person entitled to the possession thereof" are also important and relevant. From the papers if the learned Magistrate has come to a conclusion that particular person is entitled to the possession of the vehicles then

he can pass the order directing the muddamal article to be handed over to that person. From record it appears that the purchaser has paid Rs.3,10,000/- to the owner of the vehicles and society was knowing about the fact that owner has already sold vehicles to purchaser.

11. Shri B.R.Pandya, learned advocate has argued that no person would pay such a huge amount of Rs.3,10,000/to the owner without obtaining receipts from the owner. At this juncture, it is to be noted that oral evidence has been collected by the Investigating Officer that purchaser has paid an amount of in all Rs.3,10,000/- to the owner. Whether that evidence is believable or not, will be decided when trial will begin. At this juncture it is not to be decided that whatever the say has been advanced by the purchaser, is not believable. Afterall it is an oral evidence which is also one kind of evidence. It cannot be insisted at this stage from party that he must produce documentary evidence. The case can be decided on the basis of oral evidence also and therefore when there is an evidence that purchaser has paid Rs.3,10,000/- to the owner of the vehicle then there is no reason to disbelieve the case of the purchaser at this juncture. The learned Sessions Judge has reappreciated the evidence and has substituted his own decision by setting aside the order of the learned Magistrate.

12. Shri Asim Pandya, the learned advocate for the revision petitioner has argued that even the learned Sessions Judge has not ruled out the possibility of purchase of two vehicles by the purchaser from the owner. For this, he has drawn my attention to Para 9 of judgment Ex.14 which is under challenge in this present Criminal Revision Application. The learned Sessions Judge has observed that on examining the contentions taken by all the parties and the police papers at the stage of investigation, there are three possibilities which he has narrated as follows:

(1) The purchaser i.e. revision petitioner Govindbhai Tejabhai Bariya might have purchased tractor-trolly in name of Saukat Hussein Hayat by taking loan from Keval Credit Co-op.Society Ltd.

(2) After taking loan, under Hire Purchase Agreement, from said society, Saukat Hussein Hayat might have purchased tractor-trolly and by selling that two vehicles to Govindbhai Tejabhai Bariya, he recovered money in cash from purchaser and then he did not deposit the same with the society and thus he might have cheated Govindbhai

Tejabhai Bariya.

(3) Saukat Hussein Hayat and office bearers of Keval Credit Co.op. Society Ltd. might have, in collusion with each other, received money from Govindbhai Tejabhai who paid the money to Saukat Hussein Hayat, and thereafter for taking advantage of hypothecation agreement, a false complaint might have been got lodged through Saukat Hussein Hayat.

13. The learned Sessions Judge has further observed that in this way, either one or two parties out of three claimants for the vehicles might have attempted to cheat third person. In view of this, even the learned Sessions Judge has, at present, accepted the case of the purchaser that he by paying money to Saukat Hussein Hayat purchased said vehicles. It is also an admitted fact that police seized the said two vehicles from the purchaser, and therefore, the purchaser cannot be said to be a person in possession of two vehicles illegally. His possession is at present prima facie a legal possession and once the learned Magistrate who accepted the case of the purchaser on the basis of such legal possession, then there was no reason for the learned Sessions Judge to differ from that view and substitute his own finding as if he was sitting in appeal. At the cost of repetition, it is required to be stated again that scope of revisional court is very much circumscribed and limited. If finding is based on facts and if that finding is supported with legal position, then there was no reason for the learned Sessions Judge to disturb the said finding of the learned Magistrate. Thus the learned Sessions Judge who has accepted the case of purchaser, exceeded his jurisdiction by setting aside the order of the learned Magistrate.

14. On reading Section 457 of Cr.P.C. it is crystal clear that the learned Magistrate has been given a discretion to pass an order for delivery of muddamal articles to the person entitled to the possession thereof. In Sub-Sec.(1) of Sec. 457 of Cr.P.C. the words "may make such order as he thinks fit" are used. Shri Asim Pandya has cited a decision of N. MADHAVAN vs. STATE OF KERALA, reported in AIR 1979 SC 1829. In this cited case in Para 10, the Hon'ble Supreme Court has observed as follows:

" The words "may make such order as it thinks fit" in the section vest the Court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a

judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such a well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the Court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt - as in the instant case - that the property in question was seized from the custody of such accused and belonged to him.

15. In view of above legal position, if the learned Magistrate had passed an order to restore possession of the vehicles in question to the person from whose custody they were seized, then it cannot be said that said order is incorrect, illegal or perverse. The learned Sessions Judge has not assigned any reasons to disturb the finding arrived at by the learned Magistrate. The learned Magistrate passed an order in accordance with well settled legal position with regard to return of muddamal articles to the person from whose custody they were taken. Even if the arguments are accepted that the property should be delivered to the person entitled to the possession thereof, then also as a bonafide purchaser for value without notice, the purchaser is entitled to the possession of said two vehicles.

16. Shri Asim Pandya has cited the following authorities in support of his arguments :

(1) SONI CHIMANLAL JETHALAL vs. STATE OF GUJARAT & ANOR, reported in 1994(2) 35(2) GLR 1100. In this cited case, it has been held by this Court that it is the general rule that in case of acquittal, ordinarily, the property should be returned to the person from whose custody the muddamal articles were seized in the course of the investigation or in the course of trial. It has further been held that the scope of the inquiry and the powers exercisable under the provisions of Secs. 452 and 454 of the Code are, undoubtedly, summary, and the Courts do not adjudicate upon civil rights of the parties in such a case while dealing with the disposal of the muddamal articles at the conclusion of the trial. Ordinarily and as a general rule, the muddamal property should be returned to the person from whose custody it is

seized in the case where acquittal is ordered. Thus, the general rule is that the property seized from a person should be returned to him when he is acquitted of the charge. No doubt, this rule has exceptions when the Criminal Court finds that the property was in possession of the complainant and the accused took it away without his permission and it was subsequently recovered from his possession by the Police and in that case the muddamal article should be ordered to be returned or restored to the complainant. Thus, the general rule has certain and several exceptions depending upon the facts and circumstances of each case and there cannot be any straight-jacket formula, and therefore, no person can claim, as of right, that the property seized from him should be returned to him in such a contingency.

17. Here in this case, the complainant lodged a complaint with regard to theft having been committed in respect of vehicles. He did not state the name of purchaser as accused. It is not the case of the complainant that accused committed theft of said two vehicles. On the contrary, Investigating Officer has expressed his opinion based on material that the complainant in collusion with the employees of the Society has filed a false case with a view to obtain money from the Insurance Company with further understanding between the society and the complainant that on receipt of money from the Insurance Company, the complainant would deposit that amount with the Society. Thus, looking to the present set of facts and circumstances of the case, the learned Magistrate has rightly come to a conclusion that purchaser is entitled to the possession of two vehicles and therefore, the learned Sessions Judge has, for no good reason, set aside the discretionary order passed by the learned Magistrate.

(3) HUSSAIN AMIBHAI QURESHI vs. NYAJ MOHMED BADANKHA BABI& ANR. reported in 1990(2), 31(2) GLR 1035, wherein this Court has held that Criminal Court is not expected to deal with the civil rights of the parties, more so, when the complainant has failed in the criminal case. In such a case, the complainant cannot by-pass the Civil Court and obtain the possession of the muddamal truck through the Criminal Court. It is further held that Criminal Court is not required to go into title and ownership. It was required to see who had the right to possession. It is further held that the rights regarding the disposal of muddamal are property rights and the proceedings are of civil nature, even though arising in a criminal case, and in such a case, when a person whether complainant or accused becomes entitled to disposal of

muddamal property, such property right survives to the heirs and the heirs are entitled to claim the same.

In above cited case of Hussain Amibhai Qureshi (Supra), the petitioner was a registered owner of the truck. He voluntarily and lawfully parted with the possession and put the accused in possession of the truck in pursuance of an agreement to sell and that he had received part of the consideration being Rs.4,500/-. As far as the criminal charges of cheating and criminal breach of trust are concerned, criminal court acquitted the accused and dismissed the complaint. In such circumstances, the court held that if the complainant is allowed to retain the truck with him, it would amount to allowing the complainant to abuse the process of the Criminal Court.

18. Here in this case, the complainant lodged a complaint for theft having been committed in respect of vehicles and the Investigating Officer has concluded on the basis of evidence and expressed his opinion that complaint is false and it has been lodged in collusion in between the society and the complainant. It is not the case of the complainant that the accused has committed theft of said two vehicles. In view of this, this authority makes it clear that it is not necessary in all cases that motor vehicle should be returned to its owner as per R.T.O. records. This authority makes it clear that the Court has to see as to who is entitled to possession of the vehicles and for arriving at this conclusion, he has not to decide the civil rights in between the parties.

19. Admittedly, the learned Magistrate passed an order under Sec. 457 of Cr.P.C. Shri Asim Pandya has cited a case of JAGANNATH BAPU SHIRSAT vs. STATE OF MAHARASHTRA AND ANOTHER, reported in 2000 CR.L.J. 4224 (Bombay High Court). In that cited case, it has been held that the learned Additional Sessions Judge, Ahmednagar has elaborately discussed the plea of the parties and has rightly concluded that the general rule with regard to handing over possession to the registered owner is not applicable to each and every case and if it is found that opposite party has better right to possess the property, the general rule can be deviated and custody of the vehicle can legitimately be delivered to the rival complainant.

20. Shri B.R.Pandya, the learned advocate for the society has cited following four authorities;

(1) JACOB AND ANOTHER VS. JAYABHARAT CREDIT & INVESTMENT CO. LTD. AND OTHERS, reported in 1983 Cr.L.J. 1584 (Kerala High Court) . In this case, it has been held as under:

" Interim custody of a motor vehicle has to be given to the registered owner. It cannot, at any rate, be given to a person who is not the registered owner even if the Police took possession of the same from him. This is because the vehicle will have to be kept idle as only a registered owner can ply the same. If the vehicle cannot be used on the road, no purpose will be served in giving interim custody to anybody."

(2) NANDIRAM vs. STATE OF GUJARAT AND OTHERS, reported in AIR 1967 GUJARAT 80, wherein it has been held that person on whose name motor vehicle stands with registering authority will be entitled to remain in custody thereof and not any person unless he is able to establish his superior title or claim over it. Here in this case, the purchaser has shown his superior title by showing prima facie that he is a bonafide purchaser of vehicles for value without notice by paying money to the owner.

(3) T.C.GOPALAN NAIR Vs. P. KELU AND ANOTHER, reported in 1974 Cr.L.J. 210. In this case, it has been held that power of the magistrate to order custody of the property under Sec.516-A of the Criminal Procedure Code, 1898 does not extend to deciding ownership of the property under civil rights. It is strictly within the sphere of civil court. In order to find out true claimant of the property, such a motor vehicle, the Magistrate having regard to the Motor Vehicles Act, ought to have allowed the custody of such vehicle to the person in whose name certificate of registration stands, until any transfer of ownership is recorded in it.

(4) U. KARIYAPPA VS. P. SREEKANTAIAH AND ANOTHER, reported in 1980 CR.L.J. 422 (Karnataka High Court). In this case, it has been held that-

" Sec.451 Cr.P.C. empowers the criminal court to make orders for interim custody of the property produced before it during trial and inquiry. When the property is produced before the criminal court, regard being had to nature of the property so produced, the criminal court has discretion to make such order as it thinks fit for the proper custody of such pending conclusion of enquiry or

trial. While making an order for interim custody of a motor vehicle, what criminal court has to keep in view is who would be the best person to make use of the vehicle pending conclusion of the inquiry and trial. The provision of Sec.22(1) and 24 of the Motor Vehicles Act indicate that the person in whose favour the certificate of registration is issued or stands, ordinarily and obviously is the proper person for the interim custody of the vehicle so seized and produced before the criminal court."

In this authority, it has further been held that-

" Though the criminal court has discretion to make any order as it thinks fit for the proper custody of such property such a discretion has to be exercised judiciously and not arbitrarily. When the trial court makes any such order regarding the interim custody of the property in exercise of judicial discretion as provided under Section 451, Cr.P.C., the revisional court would be very slow to interfere with that order made by the Magistrate in proper exercise of the judicial discretion."

21. The authorities cited by Shri Pandya lays down a principle that Criminal Court has only to see as to who is the best person entitled to the possession of muddamal article pending inquiry or trial. Here in this case, inquiry is pending because the learned Magistrate has not yet granted "B" Summary as prayed for by the Investigating Officer. It may happen that the learned Magistrate may take cognizance on the complaint lodged by the owner and therefore, it can be said that inquiry is still pending.

22. As discussed earlier, when the learned Magistrate has followed the decision of this Court, in Hussain Amibhai Qureshi (Supra), it cannot be said that he has passed an order contrary to well settled legal position with regard to return of muddamal articles under Sec. 457 of Cr.P.C. pending the inquiry.

23. In view of what is stated hereinabove, the learned Sessions Judge has wrongly exercised his revisional jurisdiction and upset finding of the learned Magistrate based on a judicial discretion. In view of what is stated hereinabove, this Criminal Revision Application deserves to be allowed, and accordingly it is allowed. The judgment Ex.14 dt. 8th August, 2000

rendered by the learned Sessions Judge, Panch Mahals at Godhra in Criminal Revision Application No.47 of 2000 is set aside and the order dt. 5th May, 2000 passed by the learned Chief Judicial Magistrate, Godhra below application dt. 1/4/2000 of present revision petitioner is restored and confirmed. Rule is made absolute to the aforesaid extent. Interim relief granted on 20/9/2000 shall stand vacated, forthwith.

Date: 14/12/2000. (H.H.MEHTA,J.)

(saiyed)